

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

St. Bernard Hospital and Health Center

Employer

and

Case 13-RD-2510

Service Employees International Union, Local 20

Union

and

Belinda Green

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on before a hearing officer of the National Labor Relations Board, herein referred to as the Board, to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.¹

I. Issues

The Union makes two arguments in an effort to delay or foreclose further processing of the instant petition. First, the Union seeks to have the processing of the petition held in abeyance pending the resolution of unfair labor practice charges it filed against the Employer pursuant to the Board's Blocking Charge Policy². Second, the Union seeks to present testimony in an effort

¹ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

² The undersigned has taken administrative notice of the charges filed by the Union, Cases 13-CA-42880 and 13-CA-42926. Case 13-CA-42880 contains two allegations. One alleges that the Employer violated the Act by creating an impression of surveillance when it installed video cameras outside an area of the hospital allocated for use by the Union. I have dismissed this allegation due to insufficient evidence. The other allegation claims that on

to establish that the Employer's conduct alleged to constitute unfair labor practices tainted the Petitioner's showing of interest, therefore mandating the dismissal of the Petition.³ The Union relies on the Board's decision in *St. Gobain Abrasives, Inc.*, 342 NLRB No. 39 (2004) to argue that a hearing on the issue of taint is appropriate at this time.

II. Decision

With respect to the Union's first assertion, the determination of whether certain types of unfair labor practice charges block the processing of an election petition is an administrative matter not subject to a hearing. I am satisfied, through an administrative investigation, that the alleged violations are not of the character to trigger the Board's Blocking Charge Policy. See, NLRB Casehandling Manual (Part Two) Representation Proceedings, Section 11731, et seq. Therefore, continuing the hearing and holding the petition in abeyance under the Board's Blocking Policy is unwarranted, and the Union's motion to continue the hearing is denied.

The Union's second argument is likewise without merit. Contrary to the Union's claim, *St. Gobain Abrasives* supra, is not implicated in this case. In *St. Gobain Abrasives*, the Board held that, in certain circumstances, before a Regional Director dismisses a decertification petition based upon unfair labor practice allegations sufficient to warrant the issuance of complaint, a hearing must be held to determine whether there is a causal nexus between those unfair labor practices and the union's loss of support. Since there has been no determination that the unfair labor practice charges filed by the Union warrant the issuance of a complaint and the undersigned is not seeking to dismiss the petition, *St. Gobain Abrasives* is not applicable here.

Accordingly, IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 13 in the following bargaining unit:

All regular full-time and regularly scheduled on-call and service maintenance and technical employees employed by the Employer at its facility currently located at 326 West 64th Street, Chicago, Illinois, including: Birth Certificate Clerk, CNA, Carpenter, Center Service Technician, Centrex Operator, Clerk 1, Coder, Cook 1, Cook 2, Custodian, Dark Room Technician, Diet Technician, Diet Technician (registered), EEG Technician, Electrician, Food Service Worker, Groundskeeper, IV Technician, Inventory Registrar, Linen Handler, Maintenance Technician, Medical Records Analyst, Medical Technician, Medical Records Technician, Mental Health Counselor, Mental Health Worker, Monitor Technician, Morgue Attendant, Nurse Assistant 2, Painter, Parts and Tool Control Clerk, Phlebotomist

or about September 1, 2005 the Employer unilateral changed the terms of the collective bargaining agreement's access clause by removing and barring union representatives from meeting with employees on the Employer's premises. That allegation was deferred by the undersigned to resolution under the parties' grievance-arbitration procedures on October 7, 2005. Even though under the arguable merit standard of the Board's deferral policy there has been no merit determination on this latter allegation, even assuming, arguendo, that it is ultimately concluded that the Employer unilaterally changed the agreement's access provision as alleged by the Union, I have concluded, based on the Region's investigation, that this change would not, without more, warrant setting aside any subsequent election. The Union filed Charge 13-CA-42926 on October 4, 2005 and withdrew it on October 24, 2005.

³ The Hearing Office denied the Union's request to present witnesses on this issue and the Union made an offer of proof regarding its evidence.

Clerk, Physical Therapy Assistant, Plumber, Porter, Secretary 1, Secretary 2, Secretary-Pathology, Storeroom Clerk, Storeroom Inventory Clerk, Transcriber, Transporter, Ward Clerk 1, Ward Clerk 2, CT Tech, Cytology Technologist, Echo Technologist, Histology Technician, LPN 1, LPN 2, Momo/Staff Technician, Medical Laboratory Technician 1, Medical Laboratory Technician 2, Nuclear Medicine Technician, Operating Room Technician, Radiologic Technician, (non-registered), Radiologic Technician (registered), Radiologic Technician Special Procedures, Surgical Technician, UR Coordinator, Ultrasound Technician; but excluding all managers, directors, and all office clerical employees and guards, professional employees and supervisors as defined in the Act.

III. Direction of Election

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

IV. Notices of Election

Please be advised that the Board has adopted a rule requiring election notices to be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to 12:01a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

V. List of Voters

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). The Regional Director shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 13's Office, 209 South LaSalle Street, 9th Floor, Chicago, Illinois 60604, on or before **November 1, 2005**. No extension of time to file this list will be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VI. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by **November 8, 2005**.

DATED at Chicago, Illinois this. 25th day of October 2005.

Regional Director
National Labor Relations Board
Region 13
209 South LaSalle Street, 9th Floor
Chicago, Illinois 60604

CATS — ProIs

Blue Book 393-6061-3350
 393-6068-9000
 347-6020-5000

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